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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GOOGLE LLC,  
  
Plaintiff and Counter-defendant,  
  
v.  
  
SONOS, INC.,  
  
Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA  
Related to Case No. 3:21-cv-07559-WHA  
  
**SONOS, INC.'S BRIEF IN RESPONSE  
TO COURT'S ORDER RE PATENT  
SHOWDOWN TRIAL (DKT. 339)**  
  
Complaint Filed: September 28, 2020

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1 **I. INTRODUCTION**

2 On October 8, 2021, the Court ordered the parties to engage in a “patent showdown” in  
 3 which each party would select one asserted claim—“presumably the strongest case” for each  
 4 party—and “file cross motions for summary judgment on the two claims (one for each party)  
 5 selected for the patent showdown.” Dkt. 68 ¶¶ 1-2 (Showdown Order). The Court emphasized that  
 6 “[t]he parties are limited to **ONE MOTION EACH REGARDLESS OF THE NUMBER OF ISSUES**  
 7 **RAISED**” and that the showdown procedure was limited to direct infringement for the selected  
 8 claims. *Id.* ¶¶ 2 (emphasis in original), 8. The Court’s Showdown Order concluded by explaining  
 9 that “[i]f summary judgment fails to resolve the parties’ dispute over the claim(s) asserted in the  
 10 showdown, counsel should be prepared for a prompt trial on the remaining issues.” *Id.* ¶ 9.

11 Consistent with the purpose of the showdown trial, the term “issue” broadly refers to a topic  
 12 such as “standing, invalidity, noninfringement, etc.,” as opposed to a particular theory *supporting*  
 13 such a topic. *Id.* ¶ 2. Nowhere does the Court’s Showdown Order suggest that parties are permitted  
 14 to address only selected *theories* in support of whatever “issue” the party chose to raise in the  
 15 summary judgment briefing, and then silently reserve for later proceedings other theories in support  
 16 of that same issue. Making clear that the parties were required to put all their cards on the table,  
 17 the Court also clarified that there was “no limit concerning [the number of] references for validity  
 18 or invalidity.” Dkt. 206 at 2.

19 Pursuant to the Court’s Showdown Order, Sonos selected claim 1 of the ’885 Patent and  
 20 submitted its single permitted motion for summary judgment on April 14, 2022, in which Sonos  
 21 briefed the issue of direct infringement. Dkt. 208. On May 5, 2022, Google filed its opposition to  
 22 Sonos’s summary judgment motion addressing the issue of direct infringement of claim 1.  
 23 Dkt. 249. In that response brief, Google also put the issue of invalidity of claim 1 of the ’885 Patent  
 24 on the table, briefing theories under §§ 101 and 112. *Id.* at 11-25. Accordingly, Google’s brief not  
 25 only opposed Sonos’s motion for summary judgment of infringement, but also effectively cross-  
 26 moved for summary judgment of invalidity. Google’s brief said nothing about reserving for trial  
 27  
 28

1 other theories supporting its claim of invalidity.<sup>1</sup> Sonos replied on May 19, 2022, addressing both  
 2 Google’s non-infringement and invalidity arguments. Dkt. 274.

3 On July 21, 2022, the Court ruled in Sonos’s favor on the issues of infringement and validity  
 4 with respect to claim 1 of the ’885 patent. Dkt. 309. In view of this ruling, the Court ordered  
 5 Google to “show cause as to why the Court should not *sua sponte* enter summary judgment in favor  
 6 of Sonos on the issue of validity of claim 1 of the ’885 patent.” Dkt. 339 at 2.

## 7 **II. ARGUMENT**

8 Federal Rule of Civil Procedure 56 permits a court to grant summary judgment in favor of  
 9 a nonmovant after giving notice and a reasonable time to respond. Fed. R. Civ. P. 56(f)(1). In this  
 10 regard, the Ninth Circuit has “long recognized that, where the party moving for summary judgment  
 11 has had a full and fair opportunity to prove its case, but has not succeeded in doing so, a court may  
 12 enter summary judgment *sua sponte* for the nonmoving party.” *Albino v. Baca*, 747 F.3d 1162,  
 13 1176 (9th Cir. 2014). In fact, the Supreme Court has explained that “district courts are widely  
 14 acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing  
 15 party was on notice that she had to come forward with all of her evidence.” *Id.* (quoting *Celotex*  
 16 *Corp. v. Catrett*, 477 U.S. 317, 326 (1986)); *see also, e.g., Inamed Corp. v. Kuzmak*, 275 F. Supp.  
 17 2d 1100, 1135 (C.D. Cal. 2002), *aff’d*, 64 F. App’x 241 (Fed. Cir. 2003); *Cap Exp., LLC v. Zinus,*  
 18 *Inc.*, 722 F. App’x 1004, 1007-08 (Fed. Cir. 2018). In sum, this Court may grant summary  
 19 judgment *sua sponte* “if, drawing all inferences in favor of the moving party, there are no genuine  
 20 issues of material fact, the moving party has been given reasonable notice that the sufficiency of  
 21 his or her claim will be in issue, and the nonmoving party is entitled to summary judgment as a  
 22 matter of law.” *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 654-55 (9th Cir. 2016)  
 23 (citation omitted).

24  
 25  
 26  
 27  
 28 <sup>1</sup> Indeed, in its *own* motion for summary judgment of non-infringement and invalidity as to claim  
 13 of the ’615 Patent, Google argued at length that that claim was invalid based on prior art.

1           **A. Google Was On Notice That, If It Put Invalidity At Issue, It Had To Support The**  
 2           **Claim With All Theories On Which It Wished To Rely At Trial.**

3           The Court should enter summary judgment of validity in favor of Sonos. Google was given  
 4 more than reasonable notice that, once Google made invalidity an issue in the patent showdown  
 5 briefing, it had to come forward with its complete defense on that issue. Nothing in the showdown  
 6 orders in the case, or the Court’s past showdown procedures, suggested that a party could brief  
 7 select theories for an issue, whether it be infringement, non-infringement, or invalidity, and also  
 8 strategically (and silently) reserve *other* theories in support of that issue for trial. For example,  
 9 there is no doubt that, had Sonos only briefed a literal infringement theory that the Court rejected  
 10 as a matter of law, Sonos would not have been permitted to then try an unbriefed, back-up doctrine  
 11 of equivalents theory at the showdown trial. Indeed, such a practice would frustrate the primary  
 12 goal of the showdown procedure: to efficiently resolve a subset of the claims and provide key  
 13 information about the value of those claims for settlement of the larger case.

14           Here, Google strategically decided to put the issue of invalidity on the table, saddling Sonos  
 15 with having to not only respond to Google’s non-infringement arguments but also address two  
 16 different theories of invalidity in a 15-page reply brief. In this Court’s words, Google “cross  
 17 move[d] for summary judgment of noninfringement and invalidity” of claim 1 of the ’885 Patent.  
 18 Dkt. 309 at 1 (Order on Summary Judgment). That Google did not expressly label its opposition  
 19 to Sonos’s motion as a cross-motion for summary judgment is irrelevant, as the implications of  
 20 Google raising the issue of invalidity were clear: Google sought a judgment as a matter of law that  
 21 claim 1 was invalid. *See, e.g., DC Comics v. Pac. Pictures Corp.*, No. 10-cv-3633, 2013 WL  
 22 12458031, at \*1 (C.D. Cal. Feb. 21, 2013) (treating paper “not formally noticed as a cross motion”  
 23 as a cross motion because “its effect was the same”); *Cassidy v. United States*, 875 F. Supp. 1438,  
 24 1442 (E.D. Wash. 1994) (“Although the Plaintiffs have not [formally] filed a cross-motion for  
 25 summary judgment, the substance of their response brief can be reasonably construed as not only  
 26 opposing the Defendants’ motion, but also seeking judgment as a matter of law.”); Dkt. 249 at 12  
 27 (Google opposition brief) (arguing, as a matter of law, that “Claim 1 of the ’885 patent fails to meet  
 28 either step of the Supreme Court’s two-step framework in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*,

1 573 U.S. 208 (2014))), 25 (asking this Court to “find that the asserted claim lacks an adequate  
2 written description”).

3 Now that the Court has rejected Google’s leading invalidity theories, Google should not be  
4 given a second bite at the apple. Indeed, the Court’s past practice in patent showdowns gave Google  
5 ample notice that once Google made invalidity an issue in the patent showdown briefing, any  
6 theories for that issue that Google did *not* bring forward in its briefing would be considered waived.

7 For example, in *Finjan, Inc. v. Juniper Networks, Inc.*, the parties engaged in a patent  
8 showdown over claim 10 of U.S. Patent No. 8,677,494. Finjan, the patentee, selected claim 10 and  
9 limited its affirmative summary judgment briefing to the issue of direct infringement, setting forth  
10 both literal and doctrine of equivalents theories. *See* 3:17-cv-05659-WHA (N.D. Cal. Sept. 29,  
11 2017), Dkt. 98. Juniper opposed by not only addressing both theories of infringement but also by  
12 putting the issue of invalidity on the table, advancing a subject matter eligibility theory under § 101  
13 and an indefiniteness theory under § 112. *See Finjan*, Dkt. 126. In turn, Finjan’s reply addressed  
14 both Juniper’s non-infringement arguments and the issue of invalidity that Juniper brought into the  
15 showdown proceeding. *See Finjan*, Dkt. 154.

16 In its showdown summary judgment order, the Court rejected Juniper’s § 112 theory but  
17 declined to rule on the § 101 theory until it had the benefit of a trial record. *Finjan*, Dkt. 189 at 12,  
18 20. Thus, the only invalidity theory that Juniper was allowed to advance at the patent showdown  
19 trial was its argument based on § 101. *Id.* at 20-21. In other words, because Juniper put the issue  
20 of invalidity in play, but only advanced arguments based on §§ 101 and 112, the Court effectively  
21 found that Juniper forfeited any other invalidity theory, including arguments based on §§ 102 and  
22 103 theories.

23 This is confirmed by the Court’s Final Pretrial Order. *Finjan*, Dkt. 301. In the parties’  
24 *proposed* joint final pretrial order, Juniper contended that Claim 10 was “invalid under §§ 102 and  
25 103,” and that even though it had not raised these theories in response to Finjan’s motion for  
26 summary judgment of non-infringement, it had not waived them. *Finjan*, Dkt. 262 at 6 n.3. Finjan,  
27 by contrast, argued that “Juniper has waived the [§§ 102 and 103] defenses identified in footnote 3  
28 below by not raising them in its opposition to Finjan’s motion for summary judgment pursuant to

1 the schedule set by the Court.” *Id.* at 6 n.2. This Court made clear that the showdown trial would  
 2 not include the invalidity theories that Juniper failed to raise at the showdown summary judgment  
 3 phase. *Finjan*, Dkt. 301 (Final Pretrial Order). The Court also made clear that the “final pretrial  
 4 order supersedes the complaint and answer with respect to Claim 10 of the United States Patent  
 5 No. 8,677,494 (“the ’494 Patent”) except to the extent it does not reach the issues of prosecution  
 6 laches, inequitable conduct, and unclean hands.” *Id.* at 1. By not reserving the §§ 102 and 103  
 7 theories, as the Court did with certain of Juniper’s equitable defenses, those theories were clearly  
 8 off the table.

9 As another example, in *Synkcloud Technologies, LLC v. Adobe, Inc.*, the parties engaged in  
 10 a patent showdown over claim 9 of U.S. Patent No. 8,868,690. The patentee, Synkcloud, selected  
 11 claim 9 and limited its affirmative summary judgment briefing to the issue of direct infringement  
 12 under a literal infringement theory. 3:20-cv-07760-WHA (N.D. Cal. Nov. 3, 2020), Dkt. 121.  
 13 Adobe opposed the motion for summary judgment, addressing not only the issue of infringement  
 14 but also cross-moving for summary judgment of invalidity under § 101. *Synkcloud*, Dkt. 128. On  
 15 reply, Synkcloud addressed Adobe’s non-infringement arguments. *Synkcloud*, Dkt. 135.

16 Importantly, Synkcloud did not engage with Adobe’s attempt to bring the issue of invalidity  
 17 into the patent showdown. *See id.* Synkcloud instead moved to strike Adobe’s injection of this issue  
 18 into the showdown briefing as a violation of the Court’s showdown order. *Synkcloud*, Dkt. 136.  
 19 The Court ultimately granted Synkcloud’s motion to strike, reasoning that “Adobe’s cross-motion  
 20 is not consistent with the [Court’s showdown order]” and that if the Court ruled otherwise, “it would  
 21 place Synkcloud at a distinct disadvantage for *its own summary judgment motion* — requiring it to  
 22 address Adobe’s opposition to its infringement claim *and* defend against invalidity contentions for  
 23 the first time in just one, 15-page reply.” *Synkcloud*, Dkt. 146 at 2 (emphasis in original).

24 *Finjan* and *Synkcloud* put Sonos and Google on notice as to at least two critical aspects of  
 25 the Court’s showdown procedure. First, if Sonos or Google were to brief an issue in the showdown  
 26 proceeding, any theories for that issue that were not briefed would be forfeited. Second, if a party  
 27 were to inject an issue into the showdown proceeding as a defense to the other party’s motion, the  
 28

1 other party would decide whether that issue should advance in the showdown given that the party  
2 injecting the issue was in violation of the Court's showdown order.

3 This procedure is entirely consistent with the general rule that an "affirmative defense must  
4 be raised in response to a summary judgment motion, or it is waived." *Pandrol USA, LP v. Airboss*  
5 *Ry. Prods., Inc.*, 320 F.3d 1354, 1366 (Fed. Cir. 2003) (quoting *Diversey Lever, Inc. v. Ecolab,*  
6 *Inc.*, 191 F.3d 1350, 1353 (Fed. Cir. 1999)). Thus, while Google wasn't required to raise *this*  
7 affirmative defense in the showdown briefing, it did so, and in so doing it forfeited any parts of the  
8 defense that it failed to brief. *See Albino*, 747 F.3d at 1177 ("As the movants for summary judgment  
9 in this case, defendants were on notice of the need to come forward with *all their evidence* in  
10 support of this motion, and they had every incentive to do so." (emphasis added)).

11 Here, because Google did not heed the Court's emphasis that each party was allowed *only*  
12 *one* motion for summary judgment no matter the number of issues raised, Sonos could have moved  
13 to strike Google's opposition brief for raising the issue of invalidity as an improper cross-motion  
14 for summary judgment. If Sonos had done so, the issue of invalidity would not have been in play  
15 in the showdown briefing and resolvable by the Court. But Sonos did not move to strike and the  
16 Court ruled in Sonos's favor on the issue of invalidity.

17 In addition to being put on notice by this Court's multiple prior orders and practice in past  
18 showdowns, Google was also put on notice by the Court's Order to Show Cause and has been given  
19 an opportunity to respond via briefing and supporting exhibits that Google has been permitted to  
20 file simultaneously with this one. No more than that is required. *See, e.g.*, Fed. R. Civ. P. 56(f)(1);  
21 *Albino*, 747 F.3d at 1176-77. Google cannot complain at this late hour that it is not prepared to  
22 make that showing. Had Google been permitted to try its remaining invalidity theories at the  
23 showdown trial—that is, if the Court rejected Sonos's anticipated motions to exclude those theories,  
24 *see infra* II.C—the parties were prepared to try this claim in approximately two weeks. Google  
25 should thus be even *more* prepared to make its case than a party ordinarily would be on summary  
26 judgment, having presumably already identified the precise exhibits on which it would rely,  
27 planned its order of witnesses, and developed the direct examination that it would conduct in its  
28 affirmative case to try to carry its burden of proving invalidity by clear and convincing evidence.

1 Google cannot have its cake and eat it too. Google made a strategic decision to make Sonos  
 2 respond in a 15-page reply brief to multiple theories of invalidity on top of responding to Google's  
 3 non-infringement arguments. Google also apparently intended to silently reserve its *other*  
 4 invalidity theories as a back-up defense at trial. Google must live with the results of its strategic  
 5 decisions, and the Court should enter summary judgment of validity of claim 1 of the '885 Patent.

6 **B. Google Had More Than Ample Opportunity To Develop Its Prior Art Arguments,**  
 7 **But Has Yet To Develop A Colorable Theory.**

8 Google was not just on notice that its invalidity theories were subject to summary judgment,  
 9 it also had extensive time and opportunity to develop its claims. Despite this, Google has failed to  
 10 develop a colorable theory of anticipation or obviousness and has instead re-done its prior art  
 11 theories multiple times. For example, in Google's December 2021 invalidity contentions, Google  
 12 identified a "Bose Lifestyle 50 System" product purportedly available in 2001 and included an  
 13 invalidity chart mapping a "Bose Lifestyle 50 System Owner's Guide" dated October 17, 2001  
 14 against the '885 Patent. Ex. 1.<sup>2</sup> But the 2001 Bose Lifestyle 50 System clearly did not teach a  
 15 "zone scene." Recognizing this deficiency, Google's expert, Dr. Schonfeld, served an expert report  
 16 on June 22, 2022 that added unrelated Bose products from 2004 (i.e., Bose "Lifestyle SA2" and/or  
 17 "Lifestyle SA3") and an incompatible, undated Bose communication protocol (i.e., "Bose Link")  
 18 to the 2001 Bose Lifestyle 50 System. *See, e.g.*, Ex. 2, at ¶¶ 650-658. Not only was it improper to  
 19 include these unrelated Bose products and incompatible communication protocol as part of the Bose  
 20 Lifestyle 50 System, this new amalgamated "system" still did not teach a "zone scene." *See, e.g.*,  
 21 Ex. 3, at ¶¶ 756-804, 835-860. After these flaws were identified by Sonos's expert, Dr. Almeroth,  
 22 in his July 27, 2022 rebuttal expert report, Dr. Schonfeld served a supplemental expert report on  
 23 August 29, 2022 that relied on yet *another* unrelated and incompatible Bose product from 2006  
 24 (i.e., the Bose FreeSpace) as allegedly teaching a "zone scene." Ex. 4, at ¶¶ 43-45, 70. However,  
 25 even if the Bose FreeSpace qualifies as prior art in view of Sonos's December 21, 2005 invention  
 26

27 \_\_\_\_\_  
 28 <sup>2</sup> All numbered exhibits cited in this brief are attached to the Declaration of Alyssa Caridis filed  
 in support of this brief and concurrently herewith.

1 date and even if it could somehow be combined with the Bose Lifestyle 50 System, the Bose  
2 FreeSpace *still* does not teach a “zone scene.” *See, e.g.*, Ex. 3, at ¶¶ 246-250, 764-766.

3 Google did the same thing for its Squeezebox system. Recognizing the deficiencies in  
4 Google’s invalidity contentions, Dr. Schonfeld relied on new source code and testing to support his  
5 invalidity opinion that Squeezebox allegedly teaches a “zone scene.” *Compare* Ex. 5, at pp. 17-26  
6 *with* Ex. 2, at ¶¶ 352-380, 383-551. However, after reviewing Dr. Almeroth’s rebuttal report, Dr.  
7 Schonfeld supplemented his invalidity opinions for Squeezebox in an attempt to address its glaring  
8 deficiencies. *See, e.g.*, Ex. 4, at ¶¶ 28-38. Squeezebox clearly does not teach a “zone scene.” *See,*  
9 *e.g.*, Ex. 3, at ¶¶ 570-632.<sup>3</sup>

10 Google’s shifting anticipation and obviousness theories make clear that its choice not to  
11 brief summary judgment on these theories had another strategic motivation as well, namely  
12 Google’s knowledge that it had no viable theory to brief on summary judgment in April and May  
13 2022. The Court is not obligated to, nor should it, allow Google to keep iterating new theories on  
14 what would have been the eve of trial. It is not hard to see why Google continues, at this late stage,  
15 to cast about for a new theory—none of the prior art Google relies on teaches, for example, a “zone  
16 scene,” let alone two “zone scenes” with an overlapping “zone player.” At this point, enough is  
17 enough.

18 Courts are required to apply the rules of civil procedure, including Rule 56, “to secure the  
19 just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.  
20 Google made a strategic decision to not press these theories on summary judgment, in favor of  
21 other invalidity theories. There is no reason to think that Google held back its *stronger* theories for  
22 invalidity. The parties should not waste a jury’s time with Google’s apparently third- and fourth-  
23

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24  
25 <sup>3</sup> Google’s other primary prior art reference is the 2005 Sonos system. However, Google’s  
26 invalidity theories with respect to this Sonos system also fail. For example, the grouping process  
27 that Google relies on as allegedly teaching a “zone scene” is the very grouping process that the  
28 ’885 Patent itself distinguishes from the claimed “zone scene” technology. *See, e.g.*, Ex. 6 at  
8:30-56; *see also* Ex. 3, at ¶¶ 281-290. Google’s multiple attempts to supplement its invalidity  
theory based on the 2005 Sonos system cannot cure this fundamental flaw in its contentions. *See,*  
*e.g.*, Ex. 4, at ¶¶ 12-18.

1 most compelling invalidity theories after the Court has already soundly rejected the two other  
2 invalidity arguments that Google saw fit to prioritize.

3 There is no valid reason why Google could not have made these arguments in its summary  
4 judgment briefing, once it decided to inject invalidity into the briefing.<sup>4</sup> Google believed it was  
5 entitled to brief invalidity as to the '885 Patent, and it did, on two other grounds. And Google's  
6 motion for summary judgment of invalidity as to the '615 Patent focused primarily on prior art  
7 invalidity grounds. It is not plausible that Google was prevented from making these arguments  
8 regarding the '885 Patent due to page limitations or any other procedural limit on the showdown  
9 motions.<sup>5</sup> Instead, the only reasonable conclusion is that Google strategically held back its prior  
10 art-based invalidity theories because (1) those claims were less meritorious than its now-*rejected*  
11 theories of non-infringement and invalidity under §§ 101 and 112 and/or (2) Google needed more  
12 time to allow it to try to come up with a colorable prior art invalidity argument. The Court need  
13 not, and should not, reward Google's gamesmanship by giving it yet another bite at the apple.

14 **C. Had The Showdown Trial Proceeded, Sonos Would Have Moved To Strike Or**  
15 **Exclude Google's Second Wave Of Back-Up Invalidity Theories.**

16 Google's prior art-based invalidity arguments would never have reached the jury. If the  
17 showdown trial had proceeded and Google tried to advance them, Sonos was prepared to fight those  
18 issues through motions to strike Google's expert report, motions to exclude Google's expert's  
19 opinion, and motions for judgment as a matter of law, among others.

20 It is irrelevant that the parties continued expert discovery on the validity of the '885 Patent  
21 until the Court's Order to Show Cause issued or that draft pretrial filings exchanged by the parties  
22 referenced Google's invalidity claims. Sonos continued to participate in this expert discovery and  
23 prepared draft proposed pretrial exchanges based on its understanding that Google intended to try

24 \_\_\_\_\_  
25 <sup>4</sup> Google's ongoing search for a colorable theory with adequate factual support is not a valid reason  
for its delay in making these arguments in a case filed almost two years ago.

26 <sup>5</sup> If that were the case, Google could have asked the Court for additional pages, either in its opening  
27 summary judgment brief—which addressed noninfringement of the '885 patent—or in its brief in  
28 opposition to Sonos's motion for summary judgment. But if these arguments were not strong  
enough to merit asking the Court for additional pages, they do not merit occupying a jury's limited  
time.

1 to prove invalidity at the showdown trial, but Sonos did so without prejudice to Sonos moving to  
 2 exclude Google’s invalidity arguments. Had Sonos prevailed in excluding Google’s evolving prior  
 3 art theories, the pretrial materials would have been revised accordingly. Similarly, while Sonos’s  
 4 now-mooted Motion to Realign the Parties for the showdown trial assumed that Google would  
 5 “try[] to prove its invalidity defenses,” Dkt. 338 at 2 (emphasis omitted), it made clear that Sonos  
 6 believed that the trial would focus primarily on Sonos’s affirmative claims for willful infringement  
 7 and damages, *e.g.*, *id.* at 9-10. Sonos’s Motion to Realign did not need to assume that Google’s  
 8 invalidity arguments would be excluded, because the ultimate relief sought by that motion would  
 9 have been the same either way—Sonos presenting its affirmative claims first, followed by any  
 10 defensive case by Google. *See id.* at 9-10, 12.

11 Regardless, as discussed *supra* II.A-II.B., Google has already had ample notice and  
 12 opportunity to develop and make its case on invalidity. Now that the showdown trial will not  
 13 proceed in October 2022, there is no reason to put this decision off to a future pretrial conference,  
 14 much less to allow Google to present its ever-evolving prior art theories to a jury.

### 15 **III. CONCLUSION**

16 For all the foregoing reasons, the Court should enter summary judgment in favor of Sonos  
 17 on the issue of validity of claim 1 of the ’885 patent.

18  
 19 Dated: September 15, 2022

By: /s/ Clement S. Roberts

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